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Whatever Happened to the Ownership Society?

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Before Hurricane Katrina flooded the tear ducts of our politicians and the vaults of our treasury, President Bush had us talking about America's "ownership society." This is one of the best things he has done. He did it prominently in his reelection campaign. He did it bravely in relation to Social Security, which risks the outrage of the media and the votes of older people who always vote. If he did it in some ways foolishly, never mind. It showed promise because it had us talking about something central for a change. This question of ownership is at the heart of America. It always has been.

"No taxation without representation" echoed in the hearts and spirits of our fathers because it called up the ideas they held most dear. If you may not tax me except as my representative, then for the same reason you may not govern me except by my consent. If you cannot take my property except by law and with difficulty, then my title to my property is real. It is truly mine. I *own* it. And if James Madison is to be believed, my ownership of my property stands on just the same footing as my entitlement to speak my mind or to say my prayers or to vote my conscience.

It is therefore no accident that the Virginia Declaration of Rights, when it lists our inherent rights, mentions the "means of acquiring and possessing property" alongside life, liberty, and the pursuit of happiness and safety. This document was adopted on June 12, 1776, less than a month

before the Declaration of Independence, and Thomas Jefferson turned to it in the writing of the Declaration. Several people voted for ratification of both documents.

It is therefore no accident that the Bill of Rights in regard to the federal government, and the 14th Amendment in regard to the states, protects against the deprivation of our "life, liberty, or property" without due process of law.

It is therefore no accident that the idea of one man owning another man was condemned by our Founders, some of them slaveholders themselves who were, and who knew they were, condemning themselves. Our right to our property, by their principles, stems from the same source as our right to all things that naturally belong to us, including our bodies, our conscience, and our relationship with our Maker. One man, said Abraham Lincoln famously, has no right to eat the bread wrung from the sweat of other men's faces.

If this question of the ownership society is controversial today, it is another among many signs that we are in a time of fundamental dispute. If it has been engulfed for a moment by the Gulf of Mexico, it will come back nonetheless for two reasons: first, because it is engraved upon us by our first coming together; and second, because it is in jeopardy today.

The Direct Assault on Property Rights

This jeopardy is plain in several facts of direct relation to the right to property, and in several indirectly related, through their implications for constitutional government.

Start with the direct. The right to property stands now, after a generation of court rulings and political practices, upon a different footing. This is true at every level of government, from all three branches of the federal government down to the smallest tribunal in the smallest hamlet. Which property owner, wishing to build a house or expand a factory, does not fear exactions, delays and denials that may ensue anywhere and are bound to ensue wherever land is dear?

Right here in southern Michigan, some local officials oppose in principle the "conversion of public land to private," as when a property owner might take control of the unused alley behind his house. These officials have forgotten, if they knew it, that Michigan was part of the Northwest Territory. Almost the whole of that territory was converted *en masse* to private use, else we in Michigan would have nowhere to build our homes. The Northwest Ordinance, and the Land Ordinance of 1785 that preceded it, are among the finest pieces of legislation ever passed. They mark a turning away from the use of land and property as a means of control. They part from the practice of the Czar of this and the King of that, that only the Czar and the King may say who owns what and who does what with it. We are the first people fully to recognize that the public interest is best served when private people hold the means of their own existence in their own hands.

In the notorious *Kelo v. New London* decision this last summer, the Supreme Court has decided that the property of one can be taken and given to another so that the other may make more money and pay more taxes with it. The old man in his childhood home, and the widow in the dwelling where she raised her children, are no longer secure in their abodes. The Fifth Amendment states: "Nor shall private property be taken for public use without just compensation." There is no provision in the document for the taking of private land for other private uses.

In *Lucas v. South Carolina* in 1992, several members of the Supreme Court opined that Mr. Lucas could be deprived of the use of his property without compensation, so long as any small use was left to him. One Justice was of the opinion that Mr. Lucas should be happy so long as he was allowed to picnic and camp upon his parcel. The land in question was on the sea shore, and Mr. Lucas had bought it at great expense. There were houses to the left and right of him. He did manage finally to prevail, though after years of litigation and massive expense.

Mr. Lucas came out better than poor Susette Kelo. She had purchased a little pink house on the river that had been her dream. The family of one of her neighbors had lived in the region since 1895. Another lives next door to his parents, who have owned the residence since the 19th century (I know these facts from the splendid Institute for Justice, who represented Ms. Kelo).

These takings of land upon the least pretext, and the heavy regulation of land use at every level of government, form the direct assault upon the principle of ownership. The indirect assault is equally dangerous and much more general. Ultimately, it is an assault upon constitutional government itself. To understand this, we must think for just a minute about the foundation of the right to property and our other natural rights.

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Why Limited Government?

The key to understanding natural rights lies in the word "nature." It means the essential attribute of anything, whatever makes a thing what it is. It also means, for living things, the process of begetting and growth by which they come to be and thrive.

The Founders were keen students of this subject. They located the nature of man above the beasts and below God. Being imperfect—partaking of the divine but not divine—man is capable of both good and evil. Free from the government of iron instinct, he must govern himself. Government is therefore necessary, and also natural, to the human being. But in forming governments, we must remember that those who hold the power of government are human, too. They, too, are capable of evil. And so for the same reason that government is necessary, it is necessary that it be limited. In *Federalist* 51 Madison writes:

> But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.

Madison is writing here about the organizing principle of the Constitution: separation of powers. That principle means simply that all the powers of government are not to be united in a single set of hands.

Separation of powers is one of the two chief safeguards built into the Constitution against unlimited or despotic government. The other is enumeration. This principle means simply that certain things are delegated to the federal government to do. There are many of these things, and they are important. They make, and they are meant to make, a powerful government, a government powerful enough to defend our rights against enemies foreign and domestic. But although it is to be a powerful government, it is to be also a finite government. It may do the things enumerated, but not others.

Madison had written earlier, in *Federalist* 10, that the "first object" of government is to protect the "diversity in the faculties of men," in which property rights originate. Government must, Madison is saying, begin with the job of protecting property. This is the first step toward protecting what he will later define as the "permanent and aggregate interest" of the society. Only a government whose powers are divided, and only a government that is limited in scope, can be trusted effectively to protect civil and religious freedom, of which the right to property is a key element. Only such a government will leave room for people to tend to their own subsistence by the accumulation of the fruits of their own labor. Winston Churchill, especially when he was protesting against the carelessness of generals with human life and property, liked to say that in a free society, money must be allowed "to fructify in the pockets of the people."

Make no mistake, then, that the condition of the ownership society, as it was conceived by those who built the first one ever to exist, was a government limited in scope, economical in function, devoting its powerful yet finite authority to the protection of individual rights, correctly conceived.

The "Rights" Revolution

"Correctly conceived" is precisely the problem today. The ownership society is, as President Bush says, in jeopardy. It is in jeopardy because government has now grown beyond every constitutional bounds. Over the past generation, our government has been transformed to undertake any project, however remote, miniscule, or local. There is no interest, however isolated, parochial, or private, in which it will not meddle. This is unmistakably a change of constitutional proportion, a change in the very way we live. As it continues, it will necessarily alter not only our relation to the government, but also our habits of mind and the disposition of our character.

Like most powerful and sustained movements in American history, this one begins with a variation on our central idea. This variation has a strong appeal, and there is good in it. That accounts for its strength. It is, however, contradictory of our central idea and destructive of the benefits that originally flowed from it.

The variation is explained beautifully in the short message Franklin Roosevelt sent to Congress in 1944 regarding an "Economic Bill of Rights." The theme of this message is plainly revolutionary, even if on the surface it pretends only to complete the work done by the

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American Founders. The rights articulated by the Founders, Roosevelt says, are "inadequate," because "necessitous men are not free men." These "economic truths" have become "accepted as self-evident." They require a "new bill of rights." He proceeds to list the components in this new bill of rights. The list is compelling in a way that is evident all about us. Today we are constantly making new bills of rights: the Victim's Bill of Rights; the Patient's Bill of Rights; the Academic Bill of Rights; soon enough, the Aardvark's Bill of Rights.

Roosevelt's list is compelling because it is a list of good, even vital things. The list includes the right to a job, to food and clothing, to medical care and to an education. These things are indeed valuable and some of them necessary to life. And yet they differ from the list of rights in the original Bill of Rights, as Roosevelt admits. While admitting the difference, he conceals the nature of the difference. The rights protected in the original Bill of Rights do not demand anything of another except their recognition. One may pray all he pleases, and others are left free to pray or not, and with all their property intact. Short of slander, libel, or treason, one may say what he pleases and do no harm to another. We may come together, or as the Bill of Rights says, we may "assemble," and so long as we do not obstruct the traffic, others may go freely about their business.

One can see how the right to property, properly conceived, has this same attribute. If my property is the fruit of my labor, and not of yours, then we have no conflict. You may have your property, and I may have mine. What is good for me is good for you. My having my good deprives you of none of yours, and your having your good leaves me secure in mine.

The interesting thing about this understanding of rights is the harmony it breeds in society. My getting the things of which I am entitled takes nothing from you. I may own what is mine, you may own what is yours, and we may be at peace with each other. This harmony—or to use the political term, this justice—is the reason why our Constitution has lasted so long and our nation has prospered so well. We can all share hope, and in that hope we can all build our property to sustain ourselves and our families, and to provide charity for our neighbor when he is in need.

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The Current Crisis

We can see today the effects of the "new self-evident truths" (as if there could be such a thing) and the "new bill of rights." The system of philanthropy, unique to our country, that had prevented people who suffered misfortune from starving, is now replaced by a general system of taxpayer aid that has encouraged the destruction of family life, the essential way to raise children. This is nowhere more evident than in the fact that the illegitimacy rate in the 1950s, before the federal War on Poverty was launched, was four percent, whereas today it is 35 percent (68 percent among black Americans).

Or consider the "right to an education." Education was vital to the people who built our country. In the aforementioned Northwest Ordinance, they wrote: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall ever be encouraged." They proceeded then to provide the most massive subsidy to education that has ever been given in this country. The one exception to the conversion of public land to private was the holding back of 1/36th of the western land for the provision of education locally, and of course under the direction of state governments which had the constitutional power.

Today, by contrast, we have the centralized Department of Education at the federal level. In providing the "right to an education," it regulates our nation's colleges in the closest detail (Hillsdale College being an important and rare exception). Since September 11, 2001, defense spending in the U.S. has risen almost 60 percent; spending on higher education has risen more than 200 percent.

What do we get for this money? Not learning. It is notorious that college graduates today know little to nothing of the history of our country or its constitutional meaning. If you doubt this, ask a senior a few questions about the Declaration of Independence or the Constitution.

Nor does the money buy political support for the party that has voted these massively increased subsidies. It is notorious that the beneficiaries of federal aid to higher education, namely those who work in colleges, support the other party by embarrassing margins.

Nor do we get patriotism. In fact, a consortium of colleges is suing the federal government right now because they object only to the requirement that military recruiters be admitted to their

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campuses as a condition of receiving federal aid. Already these colleges are abiding thousands of pages of regulation. They object to this specific one. Perhaps they have forgotten that Article I, Section 8 of the Constitution—which enumerates the powers of Congress—mentions defense eight times. Education is not mentioned at all.

A good word is due here about many in government today. President Bush introduced the idea of private accounts in Social Security, and it has lately foundered. But the cause has been taken up by a group of young members of Congress. They are proposing variations on the powerful idea, expounded by the American Institute for Full Employment, that the portion of Social Security taken directly from a worker's pay should be placed in a private account. The other half could be used to pay benefits to those now on retirement or soon to retire. This idea would be a massive step back toward the ownership society in its full meaning.

Likewise, one wonders why those who make law today would not simply emulate the Founders in providing education. If you want to subsidize education, why not find a constitutional way? Why not a tax deduction or even a credit? Anything would be better than the current top-down bureaucratic control of matters that are essentially local or private or both.

It was well known to those who built the United States that education, food, and medicine are important. This importance has been known to nearly any fool, for as long as there has been civil society. The question is only how these things should be provided. Our Founders practiced the art of constitutional government, under which government is limited and people have the right to provide for themselves. Under this system one gets more food, and more medicine, and more education than under bureaucratic rule. Also, he gets his liberty under the law.

It was no small achievement to build the first ownership society known to man. Those who built it thought it fragile. It could be sustained only under the right principles, embodied in and practiced through the right constitutional structure. If we lose that, we will find ourselves in a condition of poverty too deep to measure in money terms.



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